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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Winter, et al.  
CASE: POW-011209  
SERIAL NO.: 09/997,724  
FILED ON: November 30, 2001  
FOR: LEAK SENSOR FOR FLOWING ELECTROLYTE  
BATTERIES

STATEMENT OF FACTS OF JODY L. FACTOR IN SUPPORT OF THE PETITION UNDER  
37 C.F.R. 1.47(b)

The Honorable Commissioner of Patents  
2900 Crystal Drive  
Arlington, VA 22202-3513

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AUG 01 2002

OFFICE OF PETITIONS

Dear Sir:

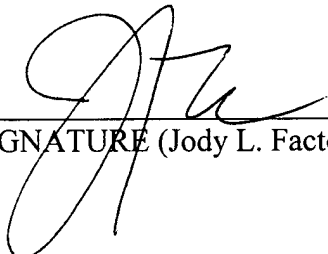
I, Jody L. Factor, a citizen of the United States of America, declare that:

1. I am a partner in the law firm of FACTOR & PARTNERS, LLC., having a place of business at 1327 West Washington Blvd., Suite 5G/H, Chicago, IL, 60607.
2. My firm represents POWERCELL CORPORATION for intellectual property matters.
3. On November 30, 2001, we filed a patent application on what became U.S. Serial No. 09/997,724 (the "Application") with the United States Patent and Trademark Office naming Richard Winter and Gerd Tomzic as the inventors.
4. The Application was filed with an unsigned Declaration so as to avoid a potential "on sale bar."
5. On December 12, 2001 my offices provided POWERCELL CORPORATION with a copy of the filed Application, along with copies of the Assignment, and Declaration and Power of Attorney documents to be executed by Mr. Winter and Mr. Tomazic

6. On December 17, 2001, my offices received a Notice to File Missing Parts. Consequently on December 20, 2001 a copy of the Notice was transmitted to POWERCELL CORPORATION along with a reminder for Mr. Winter and Mr. Tomazic to execute the documents as previously transmitted.
7. During numerous telephone conversations between the undersigned and Mr. Winter regarding the signing of such documents as transmitted to him, Mr. Winter orally agreed to sign such documents and transmit such executed documents to FACTOR & PARTNERS, LLC. via facsimile. However, these documents were never received.
8. On January 7, 2002, the undersigned sent a letter of correspondence, via Federal Express, along with copies of the documents, to Mr. Winter's last known home address of 246 Canyon Woods Way, Suite C, San Ramon, California, 94583, again requesting the execution of the documents.
9. In furtherance of the reminder of January 7, 2002, several follow-up telephone calls were made directly to Mr. Winter inquiring about the status of the documents. Each such conversation resulted in an assurance by Mr. Winter that he would indeed sign and transmit the documents to my offices. However, the documents were never received.
10. After another telephone call to Mr. Winter, on January 23, 2002, a final letter of correspondence regarding the execution of the documents was sent, via Federal Express, to Mr. Winter's home address, again requiring signature and return of the required documents.
11. As of February 11, 2002, the signed documents remain undelivered to my offices.
12. Although Mr. Winter never formally refused to sign the documents, his failure to do so after numerous requests results as a refusal to execute the documents.

13. All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application or any patent resulting therefrom.

DATED THIS 12<sup>th</sup> day of June, 2002

  
\_\_\_\_\_  
SIGNATURE (Jody L. Factor)



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MP

**IN THE  
UNITED STATES  
PATENT AND TRADEMARK OFFICE**

**IN RE APPLICATION OF:** Winter, et al.  
**CASE:** POW-011209  
**SER. NO.:** 09/997,724  
**FILING DATE:** November 30, 2001  
**FOR:** LEAK SENSOR FOR  
FLOWING ELECTROLYTE  
BATTERIES

PETITION UNDER  
37 CFR 1.47(a)

HONORABLE COMMISSIONER  
FOR PATENTS  
2900 Crystal Drive  
Arlington, VA 22202-3513

**ATTENTION OF:**

**EXAMINER:**

Dear Sir or Madam:

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 50-0545.

This petition is submitted, concurrently with the Declaration and Power of Attorney, and in response to the Notice to File Missing Parts mailed on December 13, 2001. The requisite fees are enclosed.

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AUG 01 2002  
OFFICE OF PETITIONS

03/21/2002 JADD01 00000076 09997724

03 FC:122

130.00 DP

**FACTOR & PARTNERS, LLC.**  
**1327 West Washington Blvd**  
**Suite 5G/H**  
**Chicago, IL 60607**

Jody L. Factor

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This petition is pursuant to 37 CFR 1.47(a), as a named inventor of the above-identified application has not joined in the above-mentioned patent application. Under 37 CFR 1.47(a), a petition to have a Declaration and Power of Attorney accepted in the absence of the signature of an inventor must be accompanied by:

1. an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing inventor;
2. factual proof that the missing joint inventor refuses to join the application or cannot be reached after diligent effort;
3. the fee set forth in section 1.17(h); and
4. the last known address of the non-signing joint inventor.

With respect to item (1), attached is the declaration executed by Mr. Gerd Tomazic on behalf of himself and Mr. Winter.

With respect to item (2), attached is the declaration of Mr. Jody L. Factor providing factual proof that the inventor has refused to join the application after diligent effort.

With respect to item (3), attached is a check in the amount of \$130.00 which corresponds to the fee set forth in section 1.17(h).

With respect to item (4), the last known address of Mr. Winter (the inventor) is 246 Canyon Woods Way, Suite C, San Ramon, California, 94583.

In light of the foregoing, Applicant respectfully requests the granting of the petition.

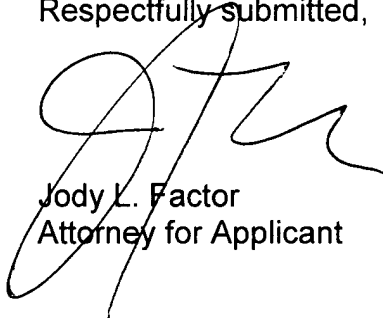
The Notice to File Missing Parts indicated that the drawings as submitted at the time of filing did not have the correct margins. Applicant submits herewith substitute drawings which are in compliance with 37 C.F.R. 1.84(g).

In addition, attached is a check in the amount of \$435.00, corresponding to the 1.) basic filing fee for a small entity (\$370.00); and 2.) surcharge for late oath or declaration (\$65.00).

Should anything further be required, a telephone call to the undersigned at (312) 226-1818 is respectfully solicited.

Respectfully submitted,

Dated: February 12, 2002

  
Jody L. Factor  
Attorney for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents & Trademarks, Washington, D.C. 20231 on February 12 2002.

Jody L. Factor

Name of Applicant, Assignee, Applicant's Attorney or Registered Representative



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: Winter, et al.  
CASE: POW-011209  
SERIAL NO.: 09/997,724  
FILED ON: November 30, 2001  
FOR: LEAK SENSOR FOR FLOWING  
ELECTROLYTE BATTERIES

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**STATEMENT OF FACTS OF GERD TOMAZIC IN SUPPORT OF THE PETITION UNDER  
37 C.F.R. 1.47(b)**

The Honorable Commissioner of Patents  
2900 Crystal Drive  
Arlington, VA 22202-3513

**RECEIVED**

AUG 01 2002

OFFICE OF PETITIONS

Dear Sir:

I, Gerd Tomazic, a citizen of Austria, declare that:

1. I am an employee of POWERCELL CORPORATION, which has a place of business at 35 Corporate Drive, Suite 190, Burlington, MA, 01803.
2. I am a joint inventor of U.S. Serial Number 09/997,724 (the "Application") filed on November 30, 2001.
3. Richard Winter is also a joint inventor of the Application.
4. By virtue of our employment at POWERCELL CORPORATION, POWERCELL CORPORATION is the owner of the Application.
5. On December 12, 2001 the Law Offices of FACTOR & PARTNERS, LCC. provided me with a copy of the Application, along with copies of the Declaration for my signature. It is my understanding that Mr. Winter was also provided with copies of the documents, along with a request to execute said documents.

6. All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application or any patent resulting therefrom.

DATED THIS 12 day of Feb, 2002

Gerd Tomazic

SIGNATURE (Gerd Tomazic)





Law Offices

**FACTOR & PARTNERS, LLC**

1327 W. Washington Boulevard, Suite 5G55  
Chicago, Illinois 60607  
Telephone (312) 226-1818  
Facsimile (312) 226-1919

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United States and International  
Intellectual Property Law

Michigan Office:  
305 Hoover Blvd., Suite 300  
Holland, Michigan 49423  
Telephone (616) 355-0400  
Facsimile (616) 355-9862

December 12, 2001

Mr. John Dotson  
POWERCELL CORPORATION  
35 Corporate Drive, Suite 190  
Burlington, MA 01803

Re: U.S. Patent Application on  
LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES  
Our File No. 011209

Dear John:

This is to inform you that we filed the above-identified patent application with the Patent Office on November 30, 2001. Enclosed is a copy for your file. As soon as we receive the official Filing Receipt, we will send a copy of it to you.

Also enclosed is an Assignment form and a Declaration and Power of Attorney form for Rick Winter's and Gerd Tomazic's signature. Please have them sign and date the documents where indicated and return the fully executed originals to our office as soon as possible.

In addition, in accordance with the USPTO's Rule with respect to the Duty of Disclosure, please provide us with any material prior art of which you or the inventor are aware. Such prior art would be deemed material if it would help an Examiner at the USPTO in his/her examination of your application. If no such prior art exist, please inform us of that as well. Please note that the Duty of Disclosure continues throughout the entire prosecution of the U.S. application. Therefore, if you become aware of any additional prior art, at any time in the future (and prior to issuance of the U.S. application), please be sure to provide us with copies so that we may submit them to the USPTO.

FACTOR & PARTNERS, LLC

Should you have any questions or comments regarding the foregoing, please do not hesitate to contact our offices.

Very truly yours,

FACTOR & PARTNERS, LLC



Jody L. Factor

JLF/jm  
Enclosures



Law Offices

**FACTOR & PARTNERS, LLC**

1327 West Washington Blvd., Suite 5G/H

Chicago, Illinois 60607

Telephone (312) 226-1818

Facsimile (312) 226-1919

Direct e-mail: jfactor@factor-ip.com

United States and International  
Intellectual Property Law

**COPY OF PARTIAL  
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Michigan Office:

305 Hoover Blvd., Suite 300

Holland, Michigan 49423

Telephone (616) 355-0400

Facsimile (616) 355-9862

December 20, 2001

**VIA FACSIMILE**

John Dotson, Esq.  
POWERCELL CORPORATION  
35 Corporate Drive, Suite 190  
Burlington, MA 01803

Re: U.S. Patent Application on  
LEAK SENSOR FOR FLOWING ELECTROLYTE  
BATTERIES  
Our File No. 011209

Dear John:

We are pleased to advise you that acknowledgment has been received from the United States Patent and Trademark Office (USPTO) concerning the filing of the above-identified patent application. Serial No. 09/997,724 has been assigned to this application under the filing date of November 30, 2001. A copy of the official filing receipt is enclosed.

In addition, we have also enclosed a copy of the Notice to File Missing Parts document which we recently received and which has a response due date of February 13, 2002. Therefore, we have enclosed an Assignment and Declaration document which must be executed by Rick Winter and Gerd Tomazic. We would appreciate it if you could please return these documents, fully executed by Rick Winter and Gerd Tomazic, back to our offices, via facsimile, with the originals to follow by regular mail, so that we can timely file our response to the Notice to File Missing Parts.

Should you have any questions or comments regarding this or any other matter, please do not hesitate to contact me.

Sincerely,

**FACTOR & PARTNERS, LLC**

Jody L. Factor

JLF:ys  
Enclosure



Law Offices

## FACTOR & PARTNERS, LLC

1327 West Washington Blvd., Suite 5G/H

Chicago, Illinois 60607

Telephone (312) 226-1818

Facsimile (312) 226-1919

Direct e-mail: jfactor@factor-ip.com

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United States and International  
Intellectual Property Law

Michigan Office:

305 Hoover Blvd., Suite 300

Holland, Michigan 49423

Telephone (616) 355-0400

Facsimile (616) 355-9862

January 23, 2002

**VIA FEDEX**

**URGENT!**

Mr. Rick Winter  
246 Canyon Woods Way  
Suite C  
San Ramon, CA 94583

Re: U.S. Patent Applications on

- CHARGING SYSTEM FOR SECONDARY BATTERIES
- LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES
- APPARATUS AND METHOD FOR INDEPENDENTLY OPERATING  
A PLURALITY OF AC VOLTAGE SOURCES IN PARALLEL
- LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES
- SYSTEM AND METHOD FOR PROVIDING ELECTRIC POWER

Our File Nos. 011190, 011209, 001341, 001342, and 001290, respectively

Dear Rick:

This letter is pursuant to our previous and numerous telephonic discussions and transmittals regarding the procurement of your signature on documents pertaining to the prosecution of the above-mentioned patent applications.

As you will recall, on a number of previous occasions we have spoken with you about and sent to you by FedEx documents pertaining to declaration of inventorship and assignment of invention for these five patent applications. For your convenience, we also included copies of each patent application as filed with the USPTO. Despite our previous transmittals and telephonic discussions, as well as your oral promise that you would execute these documents and return them to our office in a timely manner, we have yet to receive these documents with your signature.

The due date for receipt of these documents by the United States Patent and Trademark Office is rapidly approaching, and for some of the applications, has already passed. Accordingly,

Law Offices  
**FACTOR & PARTNERS, LLC**  
1327 West Washington Blvd., Suite 5G/H  
Chicago, Illinois 60607  
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Facsimile (312) 226-1919  
Direct e-mail: jfactor@factor-ip.com

United States and International  
Intellectual Property Law

Michigan Office:  
305 Hoover Blvd., Suite 300  
Holland, Michigan 49423  
Telephone (616) 355-0400  
Facsimile (616) 355-9862

January 7, 2002

**VIA FEDEX**

Mr. Rick Winter  
246 Canyon Woods Way  
Suite C  
San Ramon, CA 94583

Re: U.S. Patent Applications on  
CHARGING SYSTEM FOR SECONDARY BATTERIES and  
LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES  
Our File NoS. 011190 and 011209

Dear Rick:

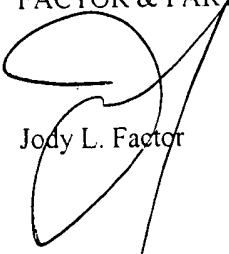
As you will recall, on a number of previous occasions we have spoken with you about and sent to you documents pertaining to declaration of inventorship and assignment of invention for the two above-mentioned patent applications. Despite our previous transmittals and telephonic discussions, we have yet to receive these documents with your signature.

The due date for receipt of these documents by the United States Patent and Trademark Office is rapidly approaching. Accordingly, please sign and date the enclosed assignment and declaration documents and return the same to our office by both facsimile and regular mail. (Also enclosed for your convenience are copies of each application as filed with the USPTO). Your timely cooperation is appreciated.

Should you have any questions or comments regarding this matter, please do not hesitate to contact me immediately.

Sincerely,

FACTOR & PARTNERS, LLC



Jody L. Factor

cc: John Dotson  
Enclosures

FACTOR & PARTNERS, LLC

please sign and date the enclosed assignment and declaration documents and return the same to our office by facsimile, with the originals to follow by regular mail. Again, **your timely cooperation is appreciated.**

It is not our wish to further inconvenience you at your home, either telephonically or by additional mailings. Therefore, should you have any questions or comments regarding this matter, please do not hesitate to contact me immediately. We look forward to your earliest reply.

Sincerely,

FACTOR & PARTNERS, LLC



Jody L. Factor

cc: John Dotson  
Enclosures